

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Appellant

v.

LINDSEY D. ROBERTSON.

Respondent

DOCKET NUMBER WD72529

DATE: December 14, 2010

Appeal From:

Circuit Court of Boone County, MO
The Honorable Clifford Eugene Hamilton, Jr., Judge

Appellate Judges:

Division Two
Karen King Mitchell, P.J., James Edward Welsh, and Mark D. Pfeiffer, JJ.

Attorneys:

Brent M. Nelson, Columbia, MO

Counsel for Appellant,

Attorneys:

Jerome S. Antel, III, Columbia, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, Appellant, v.
LINDSEY D. ROBERTSON, Respondent**

WD72529

Boone County

Before Division Two Judges: Karen King Mitchell, P.J., James Edward Welsh, and Mark D. Pfeiffer, JJ.

The State of Missouri appeals the circuit court's order granting Lindsey D. Robertson's motion to suppress evidence concerning the results of a pre-arrest portable breathalyzer test. The circuit court found that the evidence did not establish that the portable breathalyzer machine had been calibrated prior to Robertson's arrest and, therefore, no probable cause existed for her arrest. Pursuant to section 547.200.1(3), RSMo 2000, the State filed this interlocutory appeal. The State contends that the results of a portable breathalyzer test administered prior to arrest are admissible as evidence of probable cause and that the totality of the circumstances in this case establish probable cause to arrest Robertson for driving while intoxicated.

AFFIRMED.

Division Two Holds:

Although proof of calibration of the portable breathalyzer machine was not required for admissibility of the results of the portable breath test under section 577.021, RSMo Cum. Supp. 2009, the circuit court may consider the lack of calibration of a portable breathalyzer machine in determining whether the results obtained from the portable breathalyzer test were credible. In finding that no record existed establishing that the portable breathalyzer machine had been calibrated prior to Robertson's arrest, we infer that the circuit court questioned the reliability of the portable breathalyzer test and concluded that the portable breathalyzer test was not credible. We defer to the circuit court's determination on the credibility of the portable breathalyzer test evidence. Without the portable breathalyzer test results, the trooper in this case did not have probable cause to arrest Robertson. The circuit court, therefore, did not clearly err in granting Robertson's motion to suppress the evidence concerning the portable breathalyzer test.

Opinion by: James Edward Welsh, Judge

December 14, 2010

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
